

necessary for it to determine that the suspension has been accomplished in accordance with the rules of the exchange, and to verify that the exchange has not evaded the requirements of section 12(d) of the Act and Rule 12d2-2 thereunder by improperly employing a trading suspension. Without Rule 12d2-1, the Commission would be unable to fully implement these statutory responsibilities.

There are nine national securities exchanges that are subject to Rule 12d2-1. The burden of complying with Rule 12d2-1 is not evenly distributed among the exchanges, however, since there are many more securities listed on the New York Stock Exchange, Inc. ("NYSE") and the American Stock Exchange LLC ("Amex") than on the other exchanges.<sup>2</sup> However, for purposes of this filing, it is assumed that the number of responses is evenly divided among the exchanges. Since approximately 104 responses under Rule 12d2-1 are received annually by the Commission from the national securities exchanges, the resultant aggregate annual reporting hour burden would be, assuming on average one-half reporting hour per response, 52 annual burden hours for all exchanges. The related costs associated with these burden hours are \$2,886.00.

Rule 12d2-2 and Form 25 were adopted in 1935 and 1952, respectively, pursuant to sections 12 and 23 of the Act. Rule 12d2-2 sets forth the conditions and procedures under which a security may be delisted from an exchange and withdrawn from registration under section 12(b) of the Act. The Commission has recently adopted amendments to Rule 12d2-2 and Form 25.<sup>3</sup> The amendments will become effective on August 22, 2005 and the compliance date of the amendments is April 24, 2006. Under the amended Rule 12d2-2, all issuers and national securities exchanges seeking to delist and deregister a security in accordance with the rules of an exchange will file the newly adopted version of Form 25 with the Commission. The Commission has also adopted amendments to Rule 19d-1 under the Act to require exchanges to file the newly adopted version of Form 25 as notice to the Commission under section 19(d) of the Act. Finally, the Commission has adopted amendments to exempt options and security futures from section 12(d) of the Act. These amendments are intended to simplify

the paperwork and procedure associated with a delisting and to unify general rules and procedures relating to the delisting process.

The Form 25 is useful because it informs the Commission that a security previously traded on an exchange is no longer traded. In addition, the Form 25 enables the Commission to verify that the delisting has occurred in accordance with the rules of the exchange. Further, the Form 25 helps to focus the attention of delisting issuers to make sure that they abide by the proper procedural and notice requirements associated with a delisting. Without Rule 12d2-2 and the Form 25, as applicable, the Commission would be unable to fulfill its statutory responsibilities.

There are seven national securities exchanges that trade equity securities that will be respondents subject to Rule 12d2-2 and Form 25.<sup>4</sup> The burden of complying with Rule 12d2-2 and Form 25 is not evenly distributed among the exchanges, however, since there are many more securities listed on the NYSE and the Amex than on the other exchanges. However, for purposes of this filing, the staff has assumed that the number of responses is evenly divided among the exchanges. Since approximately 648 responses under Rule 12d2-2 and Form 25 for the purpose of delisting equity securities are received annually by the Commission from the national securities exchanges, the resultant aggregate annual reporting hour burden would be, assuming on average one hour per response, 648 annual burden hours for all exchanges. In addition, since approximately 57 responses are received by the Commission annually from issuers wishing to remove their securities from listing and registration on exchanges, the Commission staff estimates that the aggregate annual reporting hour burden on issuers would be, assuming on average one reporting hour per response, 57 annual burden hours for all issuers. Accordingly, the total annual hour burden for all respondents to comply with Rule 12d2-2 is 705 hours. The related costs associated with these burden hours are \$37,830.00.

Written comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of

information; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted in writing within 60 days of this publication.

Please direct your written comments to R. Corey Booth, Director/Chief Information Officer, Office of Information Technology, Securities and Exchange Commission, Station Place, 100 F Street, NE., Washington, DC 20549.

August 2, 2005.

**J. Lynn Taylor,**

*Assistant Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-52205; File No. SR-BSE-2005-29]

### Self-Regulatory Organizations; Boston Stock Exchange, Inc.; Notice of Filing of Proposed Rule Change Relating to Amendments to the Exchange's Trade-Through and Locked Markets Rules

August 4, 2005.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on August 1, 2005, the Boston Stock Exchange, Inc. ("BSE") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in items I, II, and III below, which items have been prepared by the BSE. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

#### I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The BSE is proposing to amend its rules governing the operation of the intermarket option linkage ("Linkage") on the Boston Options Exchange ("BOX"). The BSE is proposing to amend the trade-through and locked markets rules to allow a market maker to "trade and ship" or "book and ship" an order. The text of the proposed rule change is available on the BSE's Web site (<http://www.bostonstock.com>), at

<sup>2</sup> In fact, some exchanges do not file any trading suspension reports in a given year.

<sup>3</sup> See Securities Exchange Act Release No. 52029 (July 14, 2005), 70 FR 42456 (July 22, 2005).

<sup>4</sup> We note that there are two additional national securities exchanges that only trade standardized options which, as noted above, are exempt from Rule 12d2-2.

<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

the BSE's Office of the Secretary, and at the Commission's Public Reference Room.

## II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the BSE included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in item IV below. The BSE has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

### A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

#### 1. Purpose

The BSE proposes to amend its rules governing Linkage trading with respect to trade-throughs and locked markets. The amendment will provide that BOX Options Participants may: (i) Trade an order at a price that is one minimum quoting increment inferior to the national best bid or offer ("NBBO") if the Options Participant contemporaneously transmits to the market(s) disseminating the NBBO Linkage Orders<sup>3</sup> to satisfy all interest at the NBBO price ("trade and ship"); and (ii) place on the BOX book an order that would lock another exchange if the Options Participant contemporaneously sends a Linkage Order to such other exchange to satisfy all interest at the lock price ("book and ship"). Under the trade and ship proposal, pursuant to agency obligations, any execution the Options Participant receives from the market disseminating the NBBO must be reassigned to any customer order underlying the Linkage Order that was transmitted to trade against the market disseminating the NBBO. Below are examples illustrating the applications of these concepts:

- (Trade and Ship Example—BOX is disseminating an offer of \$2.00 for 100 contracts. Exchange B is disseminating the national best offer of \$1.95 for 10 contracts. No other market is at \$1.95. A BOX market maker receives a 100 contract customer buy order to pay \$2.00. Under this proposal, the BOX market maker could execute 90 contracts (or 100 contracts) of the customer order at \$2.00 provided the BOX market maker contemporaneously

transmits a 10 contract P/A Order<sup>4</sup> to Exchange B to pay \$1.95. Assuming an execution is obtained from Exchange B, the customer would receive the 10 contract fill at \$1.95 and 90 contracts at \$2.00 (if the customer order was originally filled in its entirety at \$2.00, an adjustment would be required to provide the customer with the \$1.95 price for 10 contracts reflecting the P/A Order execution). As proposed, this would not be deemed a Trade-Through.

- (Book and Ship Example—BOX is disseminating a \$1.85–\$2.00 market. Exchange B is disseminating a \$1.80–\$1.95 market. The \$1.95 offer is for 10 contracts. No other market is at \$1.95. A BOX market maker receives a customer order to buy 100 contracts at \$1.95. Under this proposal, the BOX market maker could book 90 contracts of the customer buy order at \$1.95 provided the BOX market maker contemporaneously transmits a 10 contract P/A Order to Exchange B to pay \$1.95. Assuming an execution is obtained from Exchange B, the customer would receive the 10 contract fill and the rest of the customer's order will be displayed as a \$1.95 bid on the BOX. The national best offer would likely be \$2.00. As proposed, this would not be deemed a "locked" market for purposes of the Intermarket Option Linkage Plan.

#### 2. Statutory Basis

The BSE believes that the basis under the Act for this proposed rule change is the requirement under section 6(b)(5)<sup>5</sup> that an exchange have rules that are designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. In particular, the proposed rule change will provide greater automatic execution of orders through Linkage and facilitate the ability of market makers to execute or book their customer orders.

### B. Self-Regulatory Organization's Statement on Burden on Competition

The BSE does not believe the proposed rule change will impose any burden on competition not necessary or

appropriate in furtherance of the purposes of the Act.

### C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

The BSE has neither solicited nor received comments on the proposed rule change.

### III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the BSE consents, the Commission will:

(A) By order approve such proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

### IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

#### Electronic Comments

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an e-mail to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-BSE-2005-29 on the subject line.

#### Paper Comments

- Send paper comments in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549-9303.

All submissions should refer to File Number SR-BSE-2005-29. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the

<sup>3</sup> The BSE defines "Linkage Order" in Section 1, subsection (j) of Chapter XII of BOX Rules.

<sup>4</sup> The BSE defines "Principal Acting as Agent ("P/A") Order" in Section 1, subsection (j)(i) of Chapter XII of BOX rules.

<sup>5</sup> 15 U.S.C. 78f(b)(5).

proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of the filing also will be available for inspection and copying at the principal office of the BSE. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-BSE-2005-29 and should be submitted on or before August 31, 2005.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>6</sup>

**J. Lynn Taylor,**

*Assistant Secretary.*

[FR Doc. E5-4310 Filed 8-9-05; 8:45 am]

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-52203; File No. SR-ISE-2005-36]

### Self-Regulatory Organizations; International Securities Exchange, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change and Amendment No. 1 Thereto Relating to Cancellation Fee Changes

August 3, 2005.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on July 25, 2005, the International Securities Exchange, Inc. ("ISE" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change concerning the Exchange's cancellation fee as described in items I, II, and III below, which items have been prepared by the ISE. On July 29, 2005, the ISE submitted an amendment to the proposed rule change ("Amendment No. 1").<sup>3</sup> The ISE has filed the proposed rule change as one establishing or changing a due, fee, or other charge imposed by the ISE under section 19(b)(3)(A)(ii) of the Act<sup>4</sup> and

Rule 19b-4(f)(2) thereunder,<sup>5</sup> which renders the proposal effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

#### I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The ISE proposes to amend its Schedule of Fees regarding its cancellation fee. The text of the proposed rule change is available on the Exchange's Internet Web site ([http://www.iseoptions.com/legal/proposed\\_rule\\_changes.asp](http://www.iseoptions.com/legal/proposed_rule_changes.asp)), at the principal office of the ISE, and at the Commission's Public Reference Room.

#### II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the ISE included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in item IV below. The ISE has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

##### A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

###### 1. Purpose

The purpose of this proposed rule change is to amend the ISE's cancellation fee. Through June of 2005 the Exchange charged Electronic Access Members ("EAMs") \$1 per order canceled in excess of the number of orders executed. In File No. SR-ISE-2005-31 ("Fee Amendment"), the Exchange amended that fee in a rule change effective on filing pursuant to section 19(b)(3)(A) of the Act.<sup>6</sup> To address problems the Exchange encountered in applying the cancellation fee, the Fee Amendment applied the fee: (1) On the cancellation activity of each of an EAM's customers (including itself when it self-clears), rather than the aggregate activity of all of an EAM's customers; and (2) on a per-contract, rather than a per-order basis.

Upon the Exchange's filing of the Fee Amendment, the Commission received a number of comment letters raising objections to the proposal. Based on

those comment letters, the Commission staff told the ISE that it believed that the proposed fee should be subject to formal comment pursuant to section 19(b)(2) of the Act. Accordingly, this proposed rule change will reinstate the cancellation fee as in effect prior to the submission of the Fee Amendment. The Exchange will be filing a rule change pursuant to section 19(b)(2) of the Act proposing to implement a revised fee.

###### 2. Statutory Basis

The ISE states that the basis for the proposed rule change is the requirement under section 6(b)(4) of the Act<sup>7</sup> that an exchange have an equitable allocation of reasonable dues, fees, and other charges among its members and other persons using its facilities.

##### B. Self-Regulatory Organization's Statement on Burden on Competition

The ISE states that the proposed rule change does not impose in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

##### C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

The Exchange has not solicited, and does not intend to solicit, comments on this proposed rule change. The Exchange has not received any unsolicited written comments from members or other interested parties. However, the Commission received comment letters on certain aspects of the current cancellation fee that this filing is amending. The Exchange will address those comment letters in a separate filing specifically repropounding aspects of the fee to which the commenters objected.

#### III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change, as amended, establishes or changes a due, fee, or other charge imposed by the Exchange, it has become effective pursuant to section 19(b)(3)(A) of the Act<sup>8</sup> and Rule 19b-4(f)(2)<sup>9</sup> thereunder. At any time within 60 days of the filing of the proposed rule change the Commission may summarily abrogate such proposed rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of

<sup>6</sup> 17 CFR 200.30-3(a)(12).

<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

<sup>3</sup> Amendment No. 1 clarified that the change in the cancellation fee will take effect on August 1, 2005.

<sup>4</sup> 15 U.S.C. 78s(b)(3)(A)(ii).

<sup>5</sup> 17 CFR 240.19b-4(f)(2).

<sup>6</sup> See Securities Exchange Act Release No. 52177 (July 29, 2005).

<sup>7</sup> 15 U.S.C. 78f(b)(4).

<sup>8</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>9</sup> 17 CFR 19b-4(f)(2).